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9
10 IN THE UNITED STATES DISTRICT
11 FOR THE DISTRICT OF ARIZONA

12 JAYNE SALT,
13 Plaintiff,

14 **COMPLAINT UNDER THE FEDERAL
15 TORT CLAIMS ACT FOR INJURY DUE
16 TO MEDICAL NEGLIGENCE**

17 vs.

18 THE UNITED STATES OF AMERICA,

19 Defendant.

20 Plaintiff, Jayne Salt, avers for her complaint the following:

21 1. Jayne Salt resides in Shonto, Arizona, within the Navajo Indian Reservation, and
22 in Winslow, Arizona.

23 2. This civil action seeks compensatory damages arising from the negligence of
24 employees/personnel at Tuba City Regional Health Care Corporation (“TCRHCC”) located in
25 Tuba City, Arizona, a facility operated by a tribal contractor through the U.S. Department of
26 Health and Human Services and the Indian Health Service, with funding provided through Public
27 Law 93-638, the Indian Self-Determination and Education Assistance Act.

28 **JURISDICTION AND VENUE UNDER THE FEDERAL TORT CLAIMS ACT**

29 3. This action is authorized by and is brought pursuant to the provisions of the
30 Federal Tort claims Act (FTCA), 28 U.S.C. §1346(b) and 28 U.S.C. §2671, *et seq.*, and also
31 pursuant to 28 U.S.C. §1331.

1 4. Federal statutes, including the FTCA, vest this court with exclusive jurisdiction
2 over plaintiff's claims in this case.

3 5. The FTCA makes the United States liable for the negligent acts and omissions of
4 federal "employees."

5 6. Federal employees include, but are not limited to, employees of the Indian Health
6 Service and to certain contractors and organizations such as TCRHCC and its governing board.
7

8 7. At all times material to this case defendant United States contracted with, funded,
9 and controlled TCRHCC pursuant to Public Law 93-638, the Indian Self-Determination and
10 Education Assistance Act.

11 8. TCRHCC provides medical care to Native Americans who are members of
12 recognized tribes pursuant to various federal statutes and other law.

14 9. At all times material to this case defendant United States, acting through the
15 Indian Health Service and TCRHCC, held itself out to have the ability to provide medical care to
16 members of the Navajo Nation and plaintiff at TCRHCC, including the ability to address
17 plaintiff's medical/health problems as to which plaintiff sought care at TCRHCC.
18

19 10. Plaintiff, through legal counsel, presented to the U.S. Department of Health and
20 Human Services a timely administrative claim under the FTCA alleging negligence by federal
21 "employees" of TCRHCC in the provision of medical care to plaintiff. (Exhibit 1).

22 11. As contemplated by statute, defendant has had more than six months to
23 investigate plaintiff's claim and to attempt settlement with plaintiff.
24

25 12. By statute, a claim presented under the FTCA is deemed denied by the United
26 States six months after it is presented, and plaintiff is then authorized to file a lawsuit against the
27 United States.
28

13. Despite plaintiff providing defendant with documentation of her claim, defendant has not attempted to settle with plaintiff; nor has it denied her claim.

14. Plaintiff has now exhausted her administrative remedies as required by the FTCA.

15. Plaintiff is authorized by statute to file this action in the United States District Court for the District of Arizona.

16. At all materials times, plaintiff was a tribal member of the Navajo Nation and was at all material times a resident of the Arizona portion of the Navajo Indian Reservation.

17. Venue is proper in this district under 28 U.S.C. §1402(b).

FACTUAL BACKGROUND

18. On April 4, 2016, plaintiff injured her right ankle. She was treated and released at Banner Page Hospital in Page, Arizona. Over the next few weeks, plaintiff's right ankle pain worsened.

19. In July, 2016, Plaintiff went to TCRHCC, where she was treated by podiatrist Dr. Keith Goss.

20. Plaintiff reported to TCRHCC that she suffered from diabetes mellitus type II, hypertension, chronic kidney disease, gastro-esophageal reflux disease, hyperlipidemia and an upper respiratory infection.

21. Dr. Goss identified a fracture in plaintiff's right foot and also diagnosed Charcot arthropathy. Dr. Goss recommended surgery. Plaintiff reports that Dr. Goss was adamant she needed surgery. Plaintiff also reports that Dr. Goss did not provide her with other treatment options.

22. On July 5, 2016, Dr. Goss performed surgery, operated on plaintiff and placed screws and a plate in her foot. Specifically, Dr. Goss performed a Charcot reconstruction with a

1 medial column fusion, using a tricortical iliac bone graft, and a Smith & Nephew medial column
2 fusion plate, which was fixed with screws. After surgery, plaintiff's right foot was placed in a
3 controlled ankle motion ("CAM") boot.

4 23. Plaintiff was discharged from TCRHCC on July 11, 2016. Dr. Goss gave her a
5 "good" prognosis.
6

7 24. Sometime after the surgery, as early as November, 2016, the screws that Dr. Goss
8 placed during the first surgery broke, despite plaintiff being wheelchair bound.
9

10 25. Dr. Goss performed another surgery on plaintiff on February 14, 2017, for "right
11 foot hardware removal and reconstruction with external fixation." Dr. Goss diagnosed "failed
12 hardware" as the cause of the problem.
13

14 26. On March 26, 2017, plaintiff was readmitted to TCRHCC with a post-operative
15 infection in her right foot. Plaintiff reported extreme pain, nausea, and vomiting as a result of the
16 infection. Plaintiff underwent a course of antibiotic treatment and was hospitalized until April 3,
17 2017.
18

19 27. On April 12, 2017, plaintiff was readmitted to TCRHCC and Dr. Goss performed
20 yet another surgery for replacement of "failed external fixator wires." Dr. Goss removed broken
pins and implanted two external fixator pins into plaintiff's foot.
21

22 28. On May 2, 2017, plaintiff was again readmitted to TCRHCC because of "broken
23 transfixation wires." Dr. Goss performed another surgery to remove a "proximal ring of external
24 fixator with accompanying wires." However, the pins broke yet again.
25

26 29. On June 21, 2017, Dr. Goss performed another surgery, this time for
27 "intramedullary beaming of the medial column" of plaintiff's right foot, after plaintiff had to go
28 to the emergency room because of "a wire protruding from her first metatarsal phalangeal joint."
29

1 30. Following further complications and more problems with the surgical hardware in
2 plaintiff's foot, Dr. Goss performed his final surgery on plaintiff in August 2017.

3 31. Plaintiff has suffered excruciating pain and has not been able to walk since Dr.
4 Goss first operated on her foot in July 2016.

5 32. Plaintiff transferred her care to Winslow Indian Hospital, where she was treated
6 by podiatrist Dr. Isaac Palacios. Dr. Palacios was not able to treat plaintiff conservatively; he
7 referred her to Northern Arizona Orthopedics for a right, below the knee amputation due to
8 osteomyelitis.

9
10 33. Plaintiff's right foot was amputated on February 22, 2018. The amputation was a
11 last-ditch effort to alleviate plaintiff's symptoms and to control the severe pain she was
12 experiencing. Plaintiff had a complex pain syndrome, coupled with inflammation and infection.

13
14 34. After the amputation, plaintiff was admitted to Mountain Valley Rehabilitation
15 Center in Prescott Valley, Arizona, for recovery.

16 **CAUSE OF ACTION - DUTY, NEGLIGENCE, AND CAUSATION**

17
18 35. Plaintiff repeats the averments stated in the preceding paragraphs and incorporates
19 them by reference as part of her count of negligence.

20
21 36. The United States is legally responsible for the negligent actions of TCRHCC's
22 employees, while those employees are performing job duties for the employer or engaged in
23 furtherance of the interests of the employer.

24
25 37. The involved staff who participated in the medical care of plaintiff, specifically,
26 but not limited to Dr. Goss, were employees of the Indian Health Service at all pertinent times.

27
28 38. Those employees were on the job performing job-related duties for TCRHCC at
the time they were engaged in providing healthcare to plaintiff.

1 39. If any TCRHCC staff were not actual employees of the Indian Health Service at
2 the time of the incident(s), they may have been contract employees whose contracts with the
3 defendant provide that the defendant is liable under the Federal Tort Claims Act for their
4 negligence.

5 40. If any negligent TCRHCC staff was not an actual employee of the Indian Health
6 Service at the time of the incident(s), and the preceding paragraphs 18-34 thus do not apply, they
7 may have been contract employees for whom the defendant is vicariously liable under the
8 Federal Tort Claims Act pursuant to the doctrines of law such as agency and *respondeat
superior*.

9 41. Defendant had a duty to exercise reasonable care in the diagnosis and treatment of
10 plaintiff and to possess and use the degree of skill and learning ordinarily used in the same or
11 similar circumstances by members of their professions in the provision of healthcare.

12 42. The involved staff breached the duty of reasonable care owed to plaintiff and are
13 guilty of the following negligent actions and omissions by failing to measure up to the applicable
14 standards of care, skill, and practice required of members of their professions, to wit:

15 a. Failure to seek out guidance, consultation, or advice from other physicians and/or
16 podiatrists prior to commencing an invasive procedure that more likely than not involved an
17 infectious disease process occurring in a known diabetic;

18 b. Failure to follow policies and procedures of the facility when providing medical
19 services to plaintiff and in performing an invasive procedure on a known diabetic;

20 c. Failure to transfer plaintiff in a timely manner to a hospital that could provide a
21 higher level of care;

22 d. Negligently compounding plaintiff's injury with multiple operations that only

harmed plaintiff further;

- e. Failure to consider plaintiff's health history, particularly her diabetic history;
 - f. Failure to communicate;
 - g. Failure to diagnose properly and in a timely manner, including failure to perform a differential diagnosis;
 - h. Failure to review plaintiff's medical records in a timely manner;
 - i. Negligent hiring, training, supervision, and retention of employees/personnel;
 - j. Negligent performance of pre-surgery, surgical, and post-operative surgical procedures;
 - k. Failure in the handling of follow-up care, including but not limited to failure to provide appropriate and timely follow-up care;
 - l. Failure to obtain informed consent from plaintiff;
 - m. Negligent credentialing; and,

43. The negligent actions and omissions of the TCRHCC staff were actions and omissions for which the United States would be liable to plaintiff for negligence under the laws of the State of Arizona, the place where the incident occurred, if the United States were a private individual at fault for the same negligence.

44. At all times material hereto, plaintiff was a patient of the Indian Health Services,

1 an agency of the United States Department of Health & Human Services, and was in the care and
2 custody of TCRHCC and involved staff, dependent upon the government, the hospital, and the
3 hospital staff for her medical care.

4 45. Defendant United States, acting through its employees, negligently failed to
5 provide appropriate, reasonable, and required medical care to plaintiff, which gives rise to a
6 negligence cause of action against defendant, as laid out herein.
7

8 46. As a direct and proximate result of the negligence of defendant United States and
9 its employees, plaintiff has endured multiple surgeries, pain and suffering, past and future
10 medical costs, permanent mobility impairment, permanent disfigurement, past and future
11 financial losses, impairment to her activities of daily living, and such other injuries and damages
12 as will be proved at the trial of this matter.
13

DAMAGES

15 47. Under the FTCA and the law of the place of the wrong, the State of Arizona,
16 plaintiff is entitled to compensatory damages for her losses, both special and general, non-
17 medical expenses incurred, and loss of value of household services. Defendant United States is
18 liable to plaintiff for her losses and plaintiff hereby claims a right to recover all allowable
19 damages recognized by Arizona, whether specifically mentioned herein or not.
20

CONCLUSION

22 **WHEREFORE**, plaintiff prays for the court to enter judgment for plaintiff and to order
23 that she be compensated for all losses allowed or recognized by law, for an award of allowable
24 costs, and for such other relief as recognized under the laws and rules that govern this case.
25

26 Respectfully submitted,

27 /s/Scott E. Borg
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